

United States
Circuit Court of Appeals

For the Ninth Circuit.

J. LeROY MOSER and CECIL CARROLL
MOSER, husband and wife,
Appellants.

vs.

MORTGAGE GUARANTEE COMPANY, a
corporation, Appellee.

Transcript of Record

Upon Appeal from the District Court of the United
States for the Southern District of California,
Northern Division.

FILED

JUN 25 1911

PAUL P. O'BRIEN

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic: and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellants:

LLOYD S. NIX, Esq.,
830 Title Insurance Building,
433 South Spring Street,
Los Angeles, California.

For Appellee:

MESSRS. FLEMING & ROBBINS,
C. S. TINSMAN, Esq.,
L. A. Stock Exchange Office Building,
639 South Spring Street,
Los Angeles, California. [1*]

*Page numbering appearing at foot of page of original certified Transcript of Record.

In the United States District Court for the Southern District of California, Northern Division, in Proceedings Under Section 75.

No. 4474

In the Matter of J. LEROY MOSER and CECIL CARROLL MOSER, husband and wife, Farm Debtors.

REPORT OF APPRAISAL OF FARMER'S PROPERTY

We, the undersigned, having been notified that we were appointed to estimate and appraise the real and personal property and the rental value of real estate of the above named bankrupts, respectfully report that we have attended to the duty assigned us, and after a strict examination and careful inquiry we do estimate and appraise the real property at the sum of Twenty-five Thousand dollars (\$25,000.00) in the aggregate, and the personal property at the sum of Seven Hundred Seventy-five dollars (\$775.00) in the aggregate; and we appraise rental value of estate at Two Thousand dollars (\$2,000.00) per year. That the real estate herein appraised is described as follows, to wit:

The North Half of the Southeast Quarter, Section Twelve (12), Township Twenty-Five (25) South, Range Twenty-Five East, M. D. B. & M.,

and the personal property as follows, to-wit:

Household goods: beds, bedding, carpets, dressers, davenport and kitchen utensils

1934 Nash Sedan automobile

Farming implements: wagon, tractor, 2 cultivators, 2 plows, 2 discs, and rake.

In witness whereof, we have hereunto set our hands, at Bakersfield, on this day of October, 1937.

L. R. BILLINGS,
JOHN H. B. SPEER,
H. A. BOWERS,

Appraisers. [2]

[Endorsed]: Filed October 30, 1937, Samuel Taylor, Conciliation Commissioner.

[Endorsed]: Filed May 2, 1941, R. S. Zimmerman, Clerk, by F. Betz, Deputy Clerk. [3]

[Title of District Court and Cause.]

**ORDER OF CONCILIATION COMMISSIONER
FIXING RENTAL, ETC.**

The matter of fixing the rental value and approving the report of appraisers on the property of the debtors herein having come on for hearing before the Honorable Samuel Taylor, Conciliation Commissioner, at an adjourned meeting of creditors of said debtors held October 30, 1937, at ten o'clock A.M., at Bakerfield, California, J. LeRoy Moser

and Cecil Carroll Moser, debtors herein, appearing personally, and Mortgage Guarantee Company, a corporation, appearing by and through C. S. Tinsman of Fleming & Robbins, its attorneys, and evidence on the matter having been heard and said Conciliation Commissioner being fully advised in the premises:

It Is Hereby Ordered, Adjudged and Decreed as Follows:

1. That the report of the appraisers, heretofore appointed to appraise the property of the debtors herein, appraising the following described property, to wit:

The North half of the Southeast quarter of Section twelve, Township twenty-five South, Range twenty-five East, M.D.B. & M., in the County of Kern, State of California,

at \$25,000.00, be approved;

2. That the report of said appraisers, appraising the personal property of said debtors as follows, to wit:

One Fordson Tractor with tract layer attachment	\$ 25.00
One Fordson Tractor.....	25.00
One John Deere Tractor.....	275.00
One Farm Wagon.....	50.00
One Vineyard Wagon.....	25.00

[4]

Miscellaneous Farm implements including harrows, ploughs, etc.....	50.00
One 1934 Nash.....	325.00

be approved;

3. That the following described property be set aside to the debtors herein, as exempted:

Household goods (beds, bedding, carpets, dressers, davenport and kitchen utensils)

One Fordson tractor with tract layer equipment

One Fordson tractor

One Farm Wagon

One Vineyard Wagon

Miscellaneous Farm implements (including harrows, ploughs, cultivators, etc.);

4. That all of the property of the debtors be set aside to said debtors for their use and occupancy;

5. That the reasonable rental value of the property of the debtors, not exempt, is the sum of \$1,200.00 per year, and that said \$1,200.00 shall be paid as follows, to wit, \$600.00 on the 5th day of December and \$600.00 on the 20th day of April, of each and every year, commencing on the 5th day of December, 1937; that the said monies shall be paid to the Conciliation Commissioner and shall be distributed by him as follows:

a. To the payment of taxes, improvement liens, City, County or State, and assessments;

- b. The balance to be paid to the creditors of said debtors as their priority and interests appear.

6. That all judicial action and official proceedings in any Court or under the direction of any official against the debtors or any of their property be stayed for a period of three years and [5] that during such period of three years the debtors shall be permitted to retain possession of all or any part of said property in the custody and under the control and supervision of the Court.

Dated: December 1st, 1937.

SAMUEL TAYLOR,

Conciliation Commissioner.

[Endorsed]: Filed Apr 29 1941. R. S. Zimmerman, Clerk, by L. B. Figg, Deputy Clerk. [6]

[Title of District Court and Cause.]

AMENDED ORDER OF CONCILIATION COMMISSIONER FIXING RENTAL, ETC.

The matter of fixing the rental value and approving the report of appraisers on the property of the debtors herein having come on for hearing before the Honorable Samuel Taylor, Conciliation Commissioner, at a meeting of creditors of said debtors held October 30, 1937, at ten o'clock A. M., at Bakersfield, California, J. LeRoy Moser and Cecil Carroll Moser, debtors herein, appearing personally,

and Mortgage Guarantee Company, a corporation, appearing by and through C. S. Tinsman of Fleming & Robbins, its attorneys, and evidence on the matter having been heard and said Conciliation Commissioner being fully advised in the premises: It is hereby ordered, adjudged and decreed as follows:

1. That the report of the appraisers, heretofore appointed to appraise the property of the debtors herein, appraising the following described property, to wit:

The North half of the Southeast quarter of Section twelve, Township twenty-five South, Range twenty-five East, M. D. B. & M., in the County of Kern, State of California,

at \$25,000.00, be approved;

2. That the report of said appraisers, appraising the personal property of said debtors as follows, to wit:

One Fordson Tractor with tract layer attachment	\$25.00 [7]
One Fordson Tractor	\$ 25.00
One John Deere Tractor	275.00
One Farm Wagon	50.00
One Vineyard Wagon	25.00
Miscellaneous Farm Implements, Including harrows, ploughs, etc.....	50.00
One 1934 Nash	325.00

be approved;

3. That the following described property be set aside to the debtors herein, as exempted:

Household goods (beds, bedding, carpets, dressers, davenport and kitchen utensils)

One Fordson Tractor with tract layer equipment

One Fordson Tractor

One Farm Wagon

One Vineyard Wagon

Miscellaneous Farm implements (including harrows, ploughs, cultivators, etc.):

4. That all of the property of the debtors be set aside to said debtors for their use and occupancy;

5. That the reasonable rental value of the property of the debtors, not exempt, is the sum of \$1,200.00 per year, and that said \$1,200.00 shall be paid as follows, to wit, \$600.00 on the 5th day of December and \$600.00 on the 5th day of June, of each and every year, commencing on the 5th day of December, 1937; that the said monies shall be paid to the Conciliation Commissioner and shall be distributed by him as follows:

a. To the payment of taxes, improvement liens, City, County or State, and assessments;

b. The balance to be paid to the creditors of said debtors as their priority and interests appear. [8]

6. That all judicial action and official proceedings in any Court or under the direction of any official against the debtors or any of their property be stayed for a period of three years and that during such period of three years the debtors shall be permitted to retain possession of all or any part of said property in the custody and under the control and supervision of the Court.

Dated: June 10, 1938

SAMUEL TAYLOR

Conciliation Commissioner.

[Endorsed]: Filed Apr. 29, 1941. R. S. Zimmerman, Clerk, By L. B. Figg, Deputy. [9]

1957 No. Vermont Ave.,
Hollywood, California.

December 2, 1940.

Judge Samuel Taylor,
Bakersfield, California.

Dear Sir:

Owing to the low price of grapes and the fact that land around my ranch has been selling so low I am compelled to ask for a new appraisal of my place at this time.

The 80 acres adjoining me on the east sold for \$8000.00 during the past year. This place has two houses and a much better well than mine.

The 160 acres one mile east of me sold for \$20,000, a few months ago. This place is all in grapes and has an excellent well.

I have 80 acres of land with 48 acres in grapes. Also, my well is in bad condition. It will have to be deepened at least 300 feet and will cost around \$2000. It is at present 205 feet. The other wells in the district are 500 to 700 feet.

The place on the south of me, with a good crop on it, sold for \$27,500 three years ago. This place also has two houses and a good well.

The place on the north sold for \$16,000 about two years ago.

Since that time the price of grapes has gone down very much. In 1937 I received \$16.00 per ton, delivered at Porterville for dehydration. In 1938 I received only \$9.00 and in 1939 \$8.00.

I believe the three year period granted me will terminate the 6th of this month so will you please make the necessary arrangements for a new appraisal.

Respectfully yours,

J. LEROY MOSER

[Endorsed]: Filed Apr. 18 1941. R. S. Zimmerman, Clerk, By M. M. Karcher, Deputy Clerk. [10]

Law Offices of
Fleming & Robbins
639 South Spring Street
Los Angeles, California
Telephone TRinity 4161

December 18, 1940

Clarence E. Fleming
1892-1937

Charles W. Lyon
Associate Counsel

Clay Robbins

C. S. Tinsman

Wm. E. Johnson, Jr.

Harold J. Hurley

Joseph S. Dubin

Mr. Samuel Taylor,
Conciliation Commissioner,
Morgan Building,
Bakersfield, California.

Dear Mr. Taylor:

I have come to the conclusion that you are correct in your interpretation of the Bankruptcy Act which authorizes a re-appraisal of the property upon the request of the debtor. I notice, however, that section 75(s) (3) permits you to set a date for a hearing and after the hearing fix the value of the property in accordance with the evidence submitted.

It is my recollection that this property was appraised at \$25,000.00 three years ago. Inasmuch as the obligation now due our client is in excess of \$24,800.00, we would respectfully request that you

have a hearing in this matter in the event the re-appraisal should fix the value at less than the obligation due our client. We would also appreciate your fixing the period within which the debtors can redeem this property on the re-appraised basis, but not to exceed thirty days.

I make this request for the reason that it is essential that the vineyard be pruned not later than the latter part of February. If, for any reason, this matter should be delayed past that time, some provision should be made requiring the debtors to protect the property by such pruning.

Will you please let us know what the appraiser reports.

Yours very truly,
C. S. TINSMAN of
FLEMING & ROBBINS

CST:ES

[Endorsed]: Filed Apr 18, 1941. R. S. Zimmerman, Clerk. [11]

(Title of District Court and Cause)

REPORT OF APPRAISER ON REAPPRAISAL
OF REAL PROPERTY IN THE ESTATE
HEREIN

I, the undersigned, having been appointed to reappraise the real property of the above-named bankrupts, respectfully report that I have attended to the duty assigned to me, and after a strict examination and careful inquiry, I do estimate and appraise the real property at the sum of \$9,000.00

Said real property is described as follows:

North-half of the Southeast Quarter of Section Twelve, Township Twenty-five South, Range Twenty-five East, M. D. B. & M. Kern County, California.

In witness whereof, I have hereunto set my hand at Bakersfield, Cal., this 10th day of January, 1941.

BOYCE R. FITZGERALD

Appraiser.

[Endorsed]: Filed Mar. 10, 1941. R. S. Zimmerman, Clerk. By F. Betz, Deputy Clerk. [12]

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR FILING
PETITION FOR REVIEW

Upon reading and filing of the petition of the debtors in the above entitled proceeding, and good cause appearing,

It is hereby ordered that the time within which said debtors may file a petition for review of the order of the Conciliation Commissioner fixing the value of property involved in said proceedings be, and is hereby, extended to and including the 10th day of February, 1941.

Dated, this 25th day of January, 1941.

SAMUEL TAYLOR

Conciliation Commissioner.

[Endorsed]: Filed May 2, 1941. R. S. Zimmerman, Clerk By F. Betz, Deputy Clerk. [13]

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR FILING
PETITION FOR REVIEW

Upon reading and filing of the petition of the debtors in the above entitled proceeding, and good cause appearing,

It is hereby ordered that the time within which said debtors may file a petition for review of the order of the Conciliation Commisisoner made on

the 16th day of January, 1941, fixing the value of property involved in said proceedings be, and is hereby, extended to and including the 15th day of February, 1941.

Dated this 8th day of February, 1941.

SAMUEL TAYLOR

Conciliation Commissioner.

[Endorsed]: Filed May 2, 1941. R. S. Zimmerman, Clerk. By F. Betz, Deputy Clerk. [14]

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR FILING
PETITION FOR REVIEW

Upon reading and filing of the petition of the debtors in the above entitled proceeding, and good cause appearing,

It is hereby ordered that the time within which said debtors may file a petition for review of the order of the Conciliation Commissioner fixing the value of property involved in said proceedings be, and is hereby, extended to and including the 25th day of February, 1941.

Dated, this 15th day of February, 1941.

SAMUEL TAYLOR

Conciliation Commissioner.

[Endorsed]: Filed May 2, 1941. R. S. Zimmerman, Clerk. By F. Betz, Deputy Clerk. [15]

[Title of District Court and Cause.]

PETITION FOR REVIEW OF ORDER OF
CONCILIATION COMMISSIONER

To The District Court of the United States for the
Southern District of California, Northern Di-
vision, and to the Honorable Samuel Taylor,
Conciliation Commissioner for Kern County:

The petition of J. LeRoy Moser and Cecil Car-
roll Moser, respectfully shows:

I.

That they are parties to the above entitled pro-
ceedings, to wit, the petitioning debtors therein.

II.

That heretofore, to wit, on the 9th day of April,
1937, your said petitioners duly filed their petitions
in proceedings for composition or extensions under
Section 75 of the Bankruptcy Act, praying for
relief under the provisions of said section, and
proceedings were had pursuant thereto, as in said
section provided; That on the 5th day of May, 1937,
said petitioners were adjudicated bankrupt under
the provisions of Section 75 (s) of the Bankruptcy
Act, and proceedings had pursuant thereto, includ-
ing the appraisal of their property and the making
of a rental order.

III.

That said rental order, among other things, pro-
vided that the debtors should remain in possession
of their property for a period of three years, com-

mencing on the 5th day of December, 1937; that prior to the expiration of said three-year period, to wit, [16] on or about the 2nd day of December, 1940, pursuant to the provisions of Section 75, subsection (s), subdivision (3), of the Bankruptcy Act, as amended, and particularly that portion thereof reading as follows:

“Provided, That upon request of any secured or unsecured creditor, or upon request of the debtor, the court shall cause a reappraisal of the debtor’s property, or in its discretion set a date for hearing, and after such hearing, fix the value of the property, in accordance with the evidence submitted, and the debtor shall then pay the value so arrived at into court, less payments made on the principal, for distribution to all secured and unsecured creditors, as their interests may appear, and thereupon the court shall, by an order, turn over full possession and title of said property, free and clear of encumbrances to the debtor:”

your petitioners did make application to the Conciliation Commissioner for Kern County for and request a reappraisal of their property involved in these proceedings, to wit:

The North half of the Southeast quarter of Section 12, Township 25 South, Range 25 East, M. D. B. & M., in the County of Kern, State of California,

and were instructed by said Conciliation Commissioner to and did deposit with said Conciliation Commissioner the sum of \$25.00 for appraiser's fees; that thereafter Boyce R. Fitzgerald was appointed as such appraiser, and proceeded to make such reappraisal, and on or about the 9th day of January, 1941, did file his report and reappraisal of said property with such Conciliation Commissioner, appraising the same at the sum of \$9,000.00.

That said Conciliation Commissioner did set such matter down [17] for hearing and hearing was had on the 10th day of January, 1941; that at said hearing there were present the debtor J. LeRoy Moser, in person, without counsel, and Fleming & Robbins, by C. S. Tinsman, Esquire, representing creditor, Mortgage Guarantee Company, evidence was presented and there testified Boyce R. Fitzgerald, the appraiser appointed by said Conciliation Commissioner, F. A. Nighbert and H. L. Richmond, witnesses called by said creditor, and the debtor J. LeRoy Moser was examined by the Conciliation Commissioner. That said hearing was reported by Geraldine Hall. That said matter was submitted, and on the 16th day of January, 1941, said Conciliation Commissioner did make the order, a copy of which is attached hereto, marked Exhibit "A", and made a part hereof as though set forth in full herein.

IV.

That your petitioners feel aggrieved by said order of the Conciliation Commissioner.

V.

That in making said order said Conciliation Commissioner erred in each and all of the following respects:

1. In that said Section 75 (s) (3) provides, in the alternative, for a reappraisal of the property or a hearing by the court to fix the value of the property;

2. In that the Conciliation Commissioner made no order or ruling upon the reappraisal of \$9,000.00 made by the appraiser appointed pursuant to the provisions of said Section 75 (s) (3);

3. In that said value of \$12,000.00, fixed by said Conciliation Commissioner by said order of January 16, 1941, is not in accordance with the evidence submitted at such hearing had on the 10th day of January, 1941;

4. In that said order is against law;

5. In that in making said order the Conciliation Commission- [18] er did not follow the procedure set forth in the statute, and in such cases made and provided;

6. In that said order makes no reference to the reappraisal made by said Boyce R. Fitzgerald, pursuant to the order of said Conciliation Commissioner and pursuant to the provisions of said Section 75 (s) (3);

7. In that the provision of said order that debtors be given until March 15th, 1941, within which time to pay into court the sum of \$12,000.

is not a reasonable time to be allowed therefor, and more particularly is not reasonable in each and all of the following respects—in view of the provision made by said order that pruning and necessary cultivation of said vineyard be commenced not later than March 1, 1941, and continue until properly attended to and completed at the expense of the debtors, and in further view of the fact that such cultivation and pruning will cost the debtors, aside from the services of the debtor J. LeRoy Moser, not less than the sum of \$400.00 and in further view of the fact that said order does not allow sufficient time for the refinancing of farm land.

8. In that the evidence was insufficient to justify a finding that said property is of the value of \$12,000.

Wherefore, your petitioners pray that said order of January 16, 1941, of said Conciliation Commissioner for Kern County in the above entitled proceedings, fixing value of debtors real property be reviewed, that with the Certificate of said Conciliation Commissioner on this petition for review there be included and handed up the Report and Reappraisal of said Boyce R. Fitzgerald, filed on or about the 9th day of January, 1941, and the transcript of the [19] hearing had on the 10th day of January, 1941, before said Conciliation Commissioner, that upon such review said order may be reversed, annulled and set aside, and for such other

and further order or relief as may be just and proper in the premises.

Dated, this 24th day of February, 1941.

J. LEROY MOSER

CECIL CARROLL MOSER

Debtors and Petitioners.

LLOYD S. NIX,

By LILIAN M. FISH

Attorney for Petitioners. [20]

EXHIBIT "A"

In the United States District Court for the Southern District of California Northern Division

No. 4474

In the Matter of

J. LEROY MOSER and

CECIL CARROLL MOSER,

husband and wife,

Bankrupts.

ORDER FIXING VALUE OF DEBTORS
REAL PROPERTY

The matter of fixing the value of debtors real property came on for hearing the 10th day of January, 1941, at 10 A. M., C. S. Tinsman of counsel for the Mortgage Guarantee Company a secured creditor and J. LeRoy Moser one of the debtors being present in person; evidence was adduced concerning the value at this time of the ranch and vine-

yard belonging to the debtors and the matter having been ordered submitted and after due deliberation and consideration the court concludes that the value of the said ranch and vineyard belonging to debtors and set forth in their petition and schedules on file in these proceedings is the sum of Twelve Thousand Dollars (\$12,000.00), and debtors are given until March 15, 1941, within which time to pay into court said sum and the court will thereupon by an order turn over full possession and title of said property free and clear of encumbrances to the debtors. It is ordered that pruning and necessary cultivation of said vineyard shall be commenced not later than March 1, 1941, and continue until it properly attended to and completed at the expense of the debtors.

Dated: Bakersfield, California.

January 16, 1941.

SAMUEL TAYLOR

Conciliation Commissioner Kern
County. [21]

State of California,
County of Los Angeles.—ss.

J. LeRoy Moser and Cecil Carroll Moser, each being by me first duly sworn, deposes and says: That they are the petitioning debtors and petitioners in the above entitled matter; that they each have read the foregoing Petition for Review of Order of Conciliation Commissioner and know the

contents thereof; and each of them deposes and says that the same is true of his/her own knowledge, except as to the matters which are therein stated upon his/her information or belief, and as to the matters that he/she believes it to be true.

J. LEROY MOSER

CECIL CARROLL MOSER

Subscribed and sworn to before me this 24th day of February, 1941.

[Seal] LILLIAN M. FISH

Notary Public in and for Said County and State.

[Endorsed]: Filed Mar 10 1941—10:03 A. M.
R. S. Zimmerman, Clerk By F. Betz, Deputy Clerk.

[22]

[Title of District Court and Cause.]

CERTIFICATE OF CONCILIATION COMMISSIONER (REVIEW)

I hereby certify that the only question involved in this matter is the fixing of the value of debtors ranch property upon a hearing after report by an appraiser appointed by the court, who reported the value at \$9,000.

After hearing all parties in interest and their appraisers and after making a personal visit to the ranch and looking the property over and I talked to other property owners in the vicinity I came to

the conclusion that the property was worth Twelve Thousand Dollars (\$12,000.00), and that is my finding and I accordingly fixed the value at the said amount.

The debtor is naturally aggrieved that I did not approve the appraisement of the appraiser there being a difference of Three Thousand Dollars, a hearing is provided for arriving at the fair and reasonable market value if it appears at the hearing that the value arrived at by the appraiser is in order the court can approve the appraisement, on the other hand if the appraisement of the appraiser does not meet the approval of the court, then under the law the court is empowered to fix the value arrived at from all the evidence adduced at the hearing.

I therefore conclude that the value of debtors ranch property is not contrary to the evidence adduced at the hearing and from personal knowledge of land values in the vicinity of this property.

SAMUEL TAYLOR

U. S. Conciliation Commissioner

Bakersfield, California

March 8, 1941

[Endorsed]: Filed Mar 10, 1941. R. S. Zimmerman, Clerk, By F. Betz, Deputy Clerk. [23]

[Title of District Court and Cause.]

NOTICE OF HEARING ON PETITION FOR
REVIEW

To J. LeRoy Moser and Cecil Carroll Moser and
to their Attorney, Lloyd S. Nix, and to the Hon-
orable Samuel Taylor, Conciliation Commis-
sioner:

You, and each of you, will please take notice that
the Mortgage Guarantee Company, a corporation,
secured creditor in the above entitled proceedings,
will bring on for hearing on March 10, 1941, at the
hour of 10:00 o'clock A. M., or as soon thereafter
as said matter may be heard, in the Courtroom of
the Honorable Paul J. McCormick, Federal Build-
ing, Los Angeles, California, the petition for review
of the order of the Honorable Samuel Taylor of
January 16, 1941, which petition for review was
filed herein by the said J. LeRoy Moser and Cecil
Carroll Moser.

Dated: February 26, 1941.

FLEMING & ROBBINS

By C. S. TINSMAN

Attorneys for Mortgage Guar-
tee Company [24]

State of California,
County of Los Angeles.—ss.

Evelyn Skadden, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is 639 South Spring Street, Los Angeles, California. That on the 26th day of February, A. D. 1941, affiant served the within Notice of Hearing on Petition for Review on the Conciliation Commissioner of Kern County in said action, by placing a true copy thereof in an envelope addressed to said Conciliation Commissioner at the business address of said Conciliation Commissioner, as follows: "Hon. Samuel Taylor, Conciliation Commissioner, Morgan Building, Bakersfield, California." and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California. That there is delivery service by United States mail at the place so addressed and there is a regular communication by mail between the place of mailing and the place so addressed.

EVELYN SKADDEN

Subscribed and sworn to before me this 26th day of February, 1941.

[Seal] **MARIE TREAIS**

Notary Public in and for said County and State.

Received copy of the within Notice of Hearing on
Petition for Review this day of February,
1941.

LLOYD S. NIX,
By CONRAD C. CALDWELL
Attorney for Debtors.

[Endorsed]: Filed Feb. 26, 1941—4:02 P. M.
R. S. Zimmerman, Clerk, by C. A. Simmons, Deputy
Clerk. [25]

In The District Court of The United States
For The Southern District of California
Northern Division

No. 4474

In Proceedings Under Section 75s of the
Bankruptcy Act.

In the Matter of
J. LEROY MOSER and
CECIL CARROLL MOSER,
 hubsand and wife,
 Debtors.

ORDER ON PETITION FOR REVIEW.

The Petition of J. LeRoy Moser and Cecil Car-
roll Moser, the above named Debtors for a review
of the order of the Honorable Samuel Taylor, the
Conciliation Commissioner, made herein on the
16th day of January, 1941, fixing the value of the

Debtors' property and the time for payment of such value into Court, having come on regularly for hearing before the Honorable Paul J. McCormick in the Federal Building at Los Angeles, California, at the hour of ten o'clock A. M. on March 10, 1941, the Debtors being represented by their attorney, Lloyd S. Nix, Esq., and Mortgage Guarantee Company, a corporation, a secured creditor, being represented by its attorneys, Messrs. Fleming & Robbins, by C. S. Tinsman of counsel, and the Court having been fully advised in the premises, and it appearing to the Court after a full consideration of the certificate of said Conciliation Commissioner, the transcript of the evidence and the entire record in these proceedings, that the value fixed in the sum of \$12,000.00 is supported by the evidence and that said Conciliation Commissioner, sitting as Referee, had jurisdiction and authority to fix the value of said property after the appraisal requested by the Debtors at a hearing regularly held for that purpose, which was attended by both the said Debtors and said secured Creditor, at which time the said Debtors entered into said proceedings and examined witnesses; it further appearing that all of the proceedings leading up to said order of January 16, 1941, were in accord- [26] ance with the statutes in such cases made and provided and it appearing to the Court that the Debtors should be given until June 15, 1941, in lieu of March 15, 1941, as fixed in said order of the Conciliation Commissioner with-

in which to pay into Court the said value so fixed and that the Debtors, at their expense, should be required to maintain said ranch property in good condition and cultivation during said time, doing all necessary pruning and irrigation,

Now, therefore, it is hereby ordered as follows:

1. That the procedure followed by the Conciliation Commissioner fixing the value of the Debtors property by causing a re-appraisal of the Debtors property to be had and thereafter fixing the value of such property at a hearing for such purpose in accordance with the evidence submitted, was in accordance with the powers expressly conferred upon said Conciliation Commissioner by the provisions of Section 75(s) (3) of the Bankruptcy Act and the order of said Conciliation Commissioner of January 16, 1941, fixing the value of the Debtors ranch property, to wit:

The North half of the Southeast quarter of Section 12, Township 25 South, Range 25 East, M. D. B. & M., in the County of Kern, State of California,

at the sum of \$12,000.00, be, and the same is hereby, approved and confirmed, with the exception that said Debtors shall have to and including June 15, 1941, within which to pay into Court the value so fixed in lieu of March 15, 1941, as fixed in said order of the Conciliation Commissioner.

2. That the period herein fixed for the payment of said sum into court by said Debtors is a reason-

able time for such payment under the circumstances of this case. That upon payment thereof, within the time herein prescribed, an order shall be made turning over to the Debtors full possession and title to said property, free and clear of encumbrances.

3. As a condition to an extension of said time to June [27] 15, 1941, as herein provided, it is ordered that the Debtors keep and maintain, at their expense the real property herein referred to and the improvements thereon in good condition, repair and cultivation, including all necessary irrigation and pruning, to and including June 15, 1941.

4. The Conciliation Commissioner may make such order as he may deem necessary with respect to the payment of taxes on said property during such extended period.

5. The Court reserves the right to accelerate the period in which said Debtors may pay said value so fixed into Court to such earlier time as the Court may deem just in the event the Debtors fail to perform the provisions of this order with respect to the maintenance, upkeep and cultivation of said property, or fail to comply with the order with respect to payment of taxes, if any be made by said Conciliation Commissioner, such matter may be brought on for hearing by any party interested in these proceedings by giving ten days written notice to the Debtors prior to the date fixed for such hearing. Such hearing, if any, to be initially before the Conciliation Commissioner, subject to review.

Exception to debtors noted.

Dated this 14th day of March, 1941.

PAUL J. McCORMICK

Judge

Approved as to Form:

LLOYD S. NIX

Attorney for Debtors

[Endorsed]: Filed Mar. 14, 1941. R. S. Zimmerman, Clerk, by C. A. Simmons, Deputy Clerk. [28]

[Title of District Court and Cause.]

NOTICE OF SIGNING AND FILING OF ORDER ON PETITION FOR REVIEW AND ENTRY THEREOF

To J. LeRoy Moser and Cecil Carroll Moser, Debtors, and to their Attorney Lloyd S. Nix, Esq.:

You, and each of you, will please take notice that the Honorable Paul J. McCormick did sign the Order on debtors' petition for review in the above entitled matter on March 14, 1941, and the same was filed in the records of the above entitled Court on that date.

Dated this 18th day of March, 1941.

FLEMING & ROBBINS

By C. S. TINSMAN

Attorneys for Mortgage Guarantee Company.

Received copy of the within Notice of Signing and Filing of Order on Petition for Review, this 19th day of March, 1941.

LLOYD S. NIX

By LILIAN M. FISH

Attorney for Debtors.

[Endorsed]: Filed Mar 19, 1941. R. S. Zimmerman, Clerk, By C. A. Simmons, Deputy Clerk. [29]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is Hereby Given that J. LeRoy Moser and Cecil Carroll Moser, husband and wife, debtors above named, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the Order on Petition for Review entered in these proceedings on the 14th day of March, 1941.

LLOYD S. NIX

Attorney or Appellants J. LeRoy Moser and Cecil Carroll Moser.

Address: 830 Title Insurance Bldg.
433 South Spring Street
Los Angeles, California

Copy of notice of appeal mailed to Fleming & Robbins and C. S. Tinsman, Attys. for Mortgage

Guarantee Co., and to Samuel Taylor, Conciliation
Commissioner,

R. S. ZIMMERMAN,

Clerk,

By E. L. S.

[Endorsed]: Filed Apr. 10 1941. R. S. Zimmerman,
Clerk By M. M. Karcher, Deputy Clerk. [30]

MARYLAND CASUALTY COMPANY

Baltimore

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

Know all men by these presents:

That the undersigned, Maryland Casualty Company, a corporation, duly organized and existing under and by virtue of the laws of the State of Maryland and duly licensed to transact its business in the State of California, and doing business in the County of Los Angeles, State of California, as surety, is held and firmly bound unto Mortgage Guarantee Company, a Corporation, Appellee in the above entitled matter, in the full and just sum of Two Hundred and Fifty and No/100 (\$250.00) to be paid to the said Mortgage Guarantee Company, a Corporation, to which payment, well and truly to be made, the undersigned binds itself, its successors and assigns, firmly by these presents,

Signed and dated this 8th day of April, 1941.

The condition of this obligation is: J. LeRoy Moser and Cecil Carroll Moser as Appellants have

prosecuted an appeal to the [31] United States Circuit Court of Appeals for the Ninth Circuit from an order of the District Court of the United States for the Southern District of California, Northern Division, on petition for review made and entered on the 14th day of March, 1941, in proceedings under Section 75-s of the Bankruptcy Acts, as amended, pending in that court, wherein said J. LeRoy Moser and Cecil Carroll Moser, were the petitioning debtors, and said Mortgage Guarantee Company, a Corporation, appellee, was a secured creditor.

Therefore, if the above named debtors and appellants J. LeRoy Moser and Cecil Carroll Moser shall pay all costs if the appeal is dismissed or the judgment affirmed or of such costs as the appellate court may award if the judgment is modified then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

Signed, sealed and dated this 8th day of April, 1941.

[Seal] MARYLAND CASUALTY
COMPANY

By FRANCES GRAY
Attorney-in-Fact

Examined and recommended for approval, as provided in Rule 13.

LLOYD S. NIX

Attorney for Appellants. [32]

State of California,
County of Los Angeles.—ss.

On this 9th day of April in the year one thousand nine hundred and forty one, before me L. W. Sudmeier a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Frances Gray known to me to be the duly authorized Attorney-in-Fact of Maryland Casualty Company, and the same person whose name is subscribed to the within instrument as the Attorney-in-Fact of said Corporation, and the said Frances Gray acknowledged to me that *he* subscribed the name of the Maryland Casualty Company as Surety, and *his* own name as Attorney-in-Fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

[Seal] L. W. SUDMEIER

Notary Public in and for said County and State

My Commission Expires April 11, 1944.

It is ordered that the within and foregoing bond for costs on appeal in the sum of \$250.00 be, and is hereby, approved.

Dated, April 10th, 1941.

PAUL J. McCORMICK

U. S. District Judge.

[Endorsed]: Filed Apr 10, 1941. R. S. Zimmerman, Clerk, By M. M. Karcher, Deputy Clerk. [33]

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH APPELLANTS INTEND TO RELY ON APPEAL.

This appeal arises in proceedings under Section 75-s of the Bankruptcy Act, as amended, and is taken by the debtors from an Order on Petition for Review of an order of the Conciliation Commissioner for Kern County, fixing the value of the Debtors' property and the time for payment of such value into Court, made by a District Judge on the 14th day of March, 1941, and entered on said date.

On April 9, 1937, appellants filed their petition in said proceedings for composition or extension under Section 75 of the Bankruptcy Act, thereafter amended their petition under Section 75-s, and on May 5, 1937, were adjudicated bankrupt under the provisions of said Section 75-s. Proceedings were had pursuant thereto, including the appraisal of their property and the making of a rental order. Said rental order, among other things, provided that the debtors should remain in possession of their property for a period of three years, commencing on December 5, 1937. Within said three-year period, to wit, on December 2, 1940, [34] pursuant to the provisions of said Section 75, subsection (s), subdivision (3), appellants made application to the Conciliation Commissioner for Kern County for and did request a re-

appraisal of their property involved in said proceedings, to wit:

The North half of the Southeast quarter of Section 12, Township 25 South, Range 25 East, M. D. B. & M., in the County of Kern, State of California,

and were instructed by said Conciliation Commissioner to and did deposit with said Conciliation Commissioner the sum of \$25.00 for appraiser's fees and thereafter deposited an additional sum of \$25.00 for such fees; that Boyce R. Fitzgerald was appointed as such appraiser, and on January 9, 1941, filed his report and reappraisal of said property with such Conciliation Commissioner, appraising the same at the sum of \$9,000.00. Said Conciliation Commissioner set said matter down for hearing and hearing was had on January 10, 1941. At said hearing there were present the debtor, J. LeRoy Moser, in person, without counsel, and Fleming & Robbins, by C. S. Tinsman, Esquire, representing secured creditor, Mortgage Guarantee Company. Evidence was presented and there testified said Boyce R. Fitzgerald, F. A. Nighbert and H. R. Richmond, witnesses called by said secured creditor, and the debtor, who was examined by the Conciliation Commissioner. The matter was submitted, and on January 16, 1941, said Conciliation Commissioner made an Order Fixing Value of Debtors Real Property wherein he "concludes that the value of the said ranch and vineyard belonging to debtors and set forth in their petition and

schedules on file in these proceedings is the sum of Twelve Thousand Dollars (\$12,000.00), and debtors are given until March 15, 1941, within which time to pay into court said sum and the court will thereupon by an order turn over full possession and title of said property free and clear of encumbrances to the [35] debtors," and wherein it was further ordered that pruning and necessary cultivation of said vineyard shall be commenced **not** later than March 1, 1941, and continue until properly attended to and completed at the expense of the debtors.

The certificate of the Conciliation Commissioner on review was filed with the Clerk of the United States District Court on the 10th day of March, 1941. It appears therefrom that the Conciliation Commissioner, after hearing the parties and their appraisers and after making a personal visit to the ranch and looking over the property and talking to other property owners in the vicinity, came to the conclusion that the property was worth \$12,000.

Petition for review of said order was duly filed by the debtors and came on for hearing on the 10th day of March, 1941, before the Honorable Paul J. McCormick, District Judge, at which time debtors appeared in person and by their attorney, Lloyd S. Nix, and said secured creditor, Mortgage Guarantee Company, a corporation, was represented by its attorneys, Fleming & Robbins, by

C. S. Tinsman of counsel, and the matter was heard and submitted.

On March 14, 1941, the Court made its order that the procedure followed by the Conciliation Commissioner fixing the value of the debtors' property by causing a reappraisal of the debtors' property to be had and thereafter fixing the value of such property at a hearing for such purpose in accordance with the evidence submitted, was in accordance with the powers expressly conferred upon said Conciliation Commissioner by the provisions of Section 75 (s) (3) of the Bankruptcy Act and the order of said Conciliation Commissioner of January 16, 1941, fixing the value of the debtors' ranch property hereinbefore described at the sum of \$12,000.00 was approved and confirmed, with the exception that said debtors have to and including June 15, 1941, within which to [36] pay into court the value so fixed in lieu of March 15, 1941, as fixed in said order of the Conciliation Commissioner; said order further provides that the period therein fixed for the payment of said sum into court by said debtors is a reasonable time for such payment under the circumstances of this case; that upon payment thereof, within the time prescribed, an order shall be made turning over to the debtors full possession and title to said property, free and clear of encumbrances; and as a condition to an extension of said time to June 15, 1941, that the debtors keep and maintain, at their expense, said

real property and the improvements thereon in good condition, repair and cultivation, including all necessary irrigation and pruning, to and including June 15, 1941; and that the Conciliation Commissioner may make such order as he may deem necessary with respect to the payment of taxes on said property during said extended period; and the court reserved the right to accelerate the period in which said debtors may pay said value so fixed into court to such earlier time as the court may deem just in the event the debtors fail to perform the provisions of this order with respect to the maintenance, upkeep and cultivation of said property, or fail to comply with the order with respect to payment of taxes, if any be made by said Conciliation Commissioner, such matter to be brought on for hearing by any party interested in these proceedings by giving ten days' written notice to the debtors prior to the date fixed for such hearing. Such hearing, if any, to be initially before the Conciliation Commissioner, subject to review. Exception to said order was taken by the debtors and noted.

On their appeal from said order, appellant-debtors intend to rely upon the following points, to wit:

I.

That the court erred in making said order, in that the [37] procedure set forth in the statute and in such cases made and provided was not followed

in each and all of the following respects: That Section 75 (s) (3) provides, in the alternative, for a reappraisal of the property or a hearing by the court to fix the value of the property, and further that no appeal was taken from said reappraisal, and further that the hearing before the Conciliation Commissioner was called for the purpose of determining whether the reappraisal would be accepted or rejected and not for the purpose of fixing value of said property, and further that the Conciliation Commissioner in fixing the value of said property based his findings and order on facts or evidence other than and in addition to those adduced at the hearing before him, and further that the Conciliation Commissioner considered evidence other than that of official appraisers appointed by the court, and further that no order or ruling was made by the Conciliation Commissioner upon the reappraisal of \$9,000.00 made by the appraiser appointed pursuant to the provisions of said Section 75 (s) (3) and no reference to said reappraisal is made in the order of said Conciliation Commissioner.

II.

That the court erred in making said order, in that the value of \$12,000.00 fixed by said Conciliation Commissioner by his said order fixing value was not in accordance with the evidence adduced at the hearing had before said Conciliation Commissioner.

III.

That the court erred in making said order, in that said order is against law, and particularly that the Conciliation Commissioner took evidence out of court, without notice to the debtors and without right of cross-examination, and considered the same in reaching his decision. [38]

IV.

That the court erred in making said order, in that the evidence was insufficient to justify a finding that said property is of the value of \$12,000.00, and particularly in that there was no evidence adduced at said hearing before the Conciliation Commissioner from which such a finding could be made.

Dated, this 21st day of April, 1941.

LLOYD S. NIX,

Attorney for Appellants.

Received copy of the within Statement of Points upon which Appellants intend to Rely on Appeal, this 22nd day of April, 1941.

FLEMING & ROBBINS,

C. S. TINSMAN,

By M. ANDERSON,

Attorneys for Appellee.

[Endorsed]: Filed Apr 28 1941. R. S. Zimmerman, Clerk, by L. B. Figg, Deputy Clerk. [39]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF
RECORD ON APPEAL

In the above entitled proceeding under Section 75-s of the Bankruptcy Act, the appellant-debtors hereby designate the following as the portions of the record, proceedings, and evidence to be contained in the record on appeal taken by the debtors therein from the order on petition for review, made on March 14, 1941:

1. Amended Order of Conciliation Commissioner fixing Rental, etc.
2. Request of Debtors for Reappraisal, dated December 2, 1940.
3. Report of Appraiser on Reappraisal of Real Property, dated January 10, 1941.
4. Transcript of Hearing before Conciliation Commissioner January 10, 1941.
5. Order fixing value of debtors real property, dated January 16, 1941.
6. Order extending time for filing petition for review, dated January 25, 1941.
7. Order extending time for filing petition for review, dated February 8, 1941.
8. Order extending time for filing petition for review, dated [40] February 25, 1941.
9. Petition for review of order of Conciliation Commissioner.
10. Certificate of Conciliation Commissioner (Review).

11. Notice of hearing on petition for review.
12. Order on petition for review, dated March 14, 1941.
13. Notice of signing and filing of order on petition for review and entry thereof.
14. Notice of appeal.
15. Bond for costs on appeal and order approving same.
16. Statement of points on which appellants intend to rely on appeal.
17. This designation of contents of record on appeal.

The Clerk will please prepare and transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit transcript of record on appeal in accordance with this designation.

Dated, this 21st day of April, 1941.

LLOYD S. NIX,

Attorney for Appellants.

Received copy of the within Designation of Contents *or* Record on Appeal, this 22nd day of April, 1941.

FLEMING & ROBBINS,

C. S. TINSMAN,

By M. ANDERSON,

Attorneys for Appellee.

[Endorsed]: Filed Apr. 28, 1941. R. S. Zimmerman, Clerk. By L. B. Figg, Deputy Clerk. [41]

[Title of District Court and Cause]

DESIGNATION OF ADDITIONAL PORTIONS
OF RECORD TO BE INCLUDED IN REC-
ORD ON APPEAL.

Mortgage Guarantee Company, Appellee in the above matter, hereby designates the following as additional portions of the record, proceedings and evidence to be contained in the record on appeal taken by the Debtors from the order on petition for review of March 14, 1941:

1. Order of Conciliation Commissioner fixing rental, etc., dated December 1, 1937.

2. Report of original appraisers referred to in paragraph one of said order of Conciliation Commissioner fixing rental, etc., which report appraises the value of the real property at \$25,000.00.

3. Request of Appellee, Mortgage Guarantee Company, for hearing on question of value of debtors' property, being the letter of Appellee addressed to the Honorable Samuel Taylor, Conciliation Commissioner, dated December 18, 1940, a copy of which letter is attached hereto, marked Exhibit "A".

4. This designation of additional record on appeal.

The Clerk will please include in the transcript to the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, the additional records in accordance with this designation.

Dated this 23d day of April, 1941.

FLEMING & ROBBINS,

By C. S. TINSMAN,

Attorneys for Appellee, Mortgage Guarantee Company. [42]

EXHIBIT "A"

December 18, 1940

Mr. Samuel Taylor
Conciliation Commissioner
Morgan Building
Bakersfield, California

Dear Mr. Taylor:

I have come to the conclusion that you are correct in your interpretation of the Bankruptcy Act which authorizes a re-appraisal of the property upon the request of the debtor. I notice, however, that section 75(s) (3) permits you to set a date for a hearing and after the hearing fix the value of the property in accordance with the evidence submitted.

It is my recollection that this property was appraised at \$25,000.00 three years ago. Inasmuch as the obligation now due our client is in excess of \$24,800.00, we would respectfully request that you have a hearing in this matter in the event the reappraisal should fix the value at less than the obligation due our client. We would also appreciate your fixing the period within which the debtors

can redeem this property on the reappraised basis, but not to exceed thirty days.

I make this request for the reason that it is essential that the vineyard be pruned not later than the latter part of February. If, for any reason, this matter should be delayed past that time, some provision should be made requiring the debtors to protect the property by such pruning.

Will you please let us know what the appraiser reports.

Yours very truly,
C. S. TINSMAN,
Of FLEMING & ROBBINS.

CST:ES

[43]

Received copy of the within Designation, etc., this 24th day of April, 1941.

LLOYD S. NIX,
Attorney for Debtors.

[Endorsed]: Filed Apr. 25, 1941. R. S. Zimmerman, Clerk. By M. M. Karcher, Deputy Clerk. [44]

[Title of District Court and Cause.]

STIPULATION AND ORDER FOR INCLUSION IN RECORD ON APPEAL

It Is Hereby Stipulated, by and between the parties hereto, by and through their respective attorneys, that the following be included in and made

a part of the record on appeal taken in the above entitled proceedings from the Order on Petition for Review, dated March 14, 1941:

Orders extending time for filing petition for review, dated January 25, 1941, February 8, 1941, and February 25, 1941, respectively;

Order of Conciliation Commissioner fixing rental, etc., dated December 1, 1937;

Report of original appraisers referred to in paragraph one of said order fixing rental;

Amended order of Conciliation Commissioner fixing rental, etc.;

Request of debtors for reappraisal, dated December 2, 1940;

Request of Appellee, Mortgage Guarantee Company, for hearing on question of value of debtors' property, being letter of appellee addressed to Honorable Samuel Taylor, Conciliation Commissioner, dated December 18, 1940.

Dated, this 30th day of April, 1941.

LLOYD S. NIX,

Attorney for Appellants.

FLEMING & ROBBINS,

By C. S. TINSMAN,

Attorneys for Appellee.

It Is So Ordered. May 1st, 1941.

PAUL J. McCORMICK,

United States District Judge.

[Endorsed]: Filed May 1, 1941. R. S. Zimmerman, Clerk. By L. B. Figg, Deputy Clerk. [46]

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT OF HEARING
ON JANUARY 10, 1941, BEFORE HON.
SAMUEL TAYLOR, CONCILIATION COM-
MISSIONER, AT HIS OFFICE IN THE
MORGAN BUILDING, BAKERSFIELD,
CALIFORNIA, ON THE REPORT OF THE
APPRAISER APPOINTED TO RE-AP-
PRAISE PROPERTY OF DEBTORS AFT-
ER THE EXPIRATION OF THE THREE-
YEAR MORATORIUM HERETOFORE
GRANTED BY THE COURT, AND FOR
TAKING ADDITIONAL EVIDENCE IN
REGARD TO THE REPORT OF THE AP-
PRAISER.

Counsel Appearing:

C. S. Tinsman, Esquire, for the law firm Flem-
ing & Robbins, representing Mortgage Guarantee
Company.

J. LeRoy Moser, the Debtor, appearing for him-
self and without counsel. [47]

Bakersfield, California, January 10, 1941.

This matter came on regularly before the Com-
missioner for hearing, and the following proceed-
ings were had and testimony given:

By the Commissioner: We have the appraise-
ment of the Official Appraiser appointed to ap-
praise the real property belonging to this Estate. The
return of the Appraiser fixes the estimate and ap-

praisal of the real property in the sum of \$9,000. Now, I am prepared to hear evidence from any source to either accept or reject this appraisalment.

By Mr. Tinsman: Could I first cross-examine Mr. Fitzgerald regarding the appraisalment?

By the Commissioner: Yes.

BOYCE R. FITZGERALD

By Mr. Tinsman: Q. Mr. Fitzgerald, you appraised this property for the Conciliation Commissioner three years ago, did you not?

A. No sir.

By Mr. Tinsman: I thought that it was going to be the same appraiser.

By the Commissioner: No, my error; he has been the appraiser for nearly three years, but at that time there were three appraisals as provided by the law, but when the law was changed in 1938, from that time there has been only one appraiser.

Q. You did not, then appraise this property at all at the original inception of these proceedings?

A. No sir.

Q. When was the first time you saw this property?

A. Well, I have been familiar with this particular eighty acres [49] for probably twenty years.

Q. Whereabouts are your offices, Mr. Fitzgerald?

A. At the present time I work out of my home, 2339 Elm Avenue, Bakersfield.

Q. I notice in your report you appraise the real

(Testimony of Boyce R. Fitzgerald.)

property in the sum of \$9,000. Tell me how you arrived at that sum.

A. I base my market value on the actual sales that have taken place in the immediate vicinity in the last three years.

Q. Did you at that time take into consideration the sale of the Mosesian eighty acres which took place within the last three years, adjoining the Moser property?

A. I don't know of any—can you give me the description of it?

Q. You are familiar with the Moser property, you say? A. Yes.

Q. It is the eighty acres immediately adjoining it on the north. What other sales were there that you are familiar with?

A. The west half of the southwest quarter of 7, 25/26. That is a sale from Mr. Davis to Ray Rippy.

Q. Where is that located with reference to this Moser estate?

A. Right across the road.

Q. How many acres?

A. Eighty; that is for consideration of \$8,000 cash.

Q. Is that improved?

A. It is; about forty acres in vineyard, and the balance is vacant but has cotton stalks on it now.

(Testimony of Boyce R. Fitzgerald.)

Q. Are there any houses on that?

A. A small house.

By Mr. Moser: There are two sets of buildings on the Rippy place, more valuable than mine. [50]

Q. Any barns? A. A few out-buildings.

Q. Drying sheds?

A. There might be something, an out-shed that they could use for that purpose; they are not large.

Q. Do you know what buildings are on the Moser property?

A. There is a four-room house and a barn and kind of an outbuilding, shed, that could be used I guess, for drying purposes.

Q. Does the eighty acres you have just mentioned with reference to the sale have a pump on it? A. It has a well and pumping plant.

Q. How many feet of concrete pipe are on that eighty?

A. It is all piped on that particular eighty; a fourteen hundred foot pipe line.

Q. And is that concrete pipe? A. Yes.

Q. Is there any differential in your opinion, between the improvements on the Moser property and that on the acreage you are speaking of?

A. Well, the buildings might be worth a little more on the Moser, but the vineyard on the Rippy property is in considerably better shape, and also the well will furnish more water.

Q. You say there are forty acres of grapes on the Rippy piece? A. Yes.

(Testimony of Boyce R. Fitzgerald.)

Q. How many are on the Moser property?

A. Well, there is about forty-five acres I presume, but they are placed, some of the vines are twice as far apart as they are on the Rippy place.

Q. Is there also some acreage on the Moser place in cotton? [51]

A. I think last year they had some of the Moser acreage in corn if I remember correctly.

Q. What variety of vines are on the Rippy property? A. Thompsons.

Q. Oh, Thompsons?

A. I don't know about that, just checking them over they looked to me like they are Thompson Seedless.

Q. When did that sale take place?

A. About two years ago.

Q. Was that a forced sale under foreclosure, or do you know just what the reason for the sale was, or how it came about?

A. I don't know whether it was a forced sale or not. I do know it was all cash paid for the eighty acres.

By Mr. Tinsman: (Interrogating Mr. Moser) Mr. Moser, do you know whether that was a forced sale or not?

By Mr. Moser: To my knowledge it was not. Mr. Davis had it up for sale a good while, and to my knowledge it wasn't a forced sale, I think not.

Q. What other sales, Mr. Fitzgerald?

(Testimony of Boyce R. Fitzgerald.)

A. The William L. Linebarger place, the eighty acres in the east half of the southwest quarter of 7, 25/26; that would be a quarter of a mile east from the Moser property. That sold in 1935 from the Occidental Life Insurance Company to Linebarger for \$8,000.00, and they reserved half of the minerals.

Q. That was eighty acres? A. Yes.

Q. Was that improved at the time of the sale?

A. It had vines on it at the time of the sale, but since then the [52] vines have all been taken out.

Q. How about the houses, barns, and things like that?

A. They had a livable house on that place, about a four-room house; it is livable only.

Q. Was that on the property at the time they bought it, or has it been constructed since?

A. I think it was on the property at the time.

Q. As a matter of fact, isn't the Moser piece of more value than that property would be because of this closer proximity to town?

A. I have given it an increased value of \$1,000.00 on account of its being a little closer to town.

Q. Did you give the Moser piece an increased value because of the value of its improvements over the other property?

A. I had to take some consideration of the vineyard being so wide apart that there could be another row of grapes planted in between the grapes there at the present time.

(Testimony of Boyce R. Fitzgerald.)

Q. How many acres does that consist of, the wide planting, is it over the entire acreage?

A. It is probably half, or anyway, probably twenty acres, I would judge.

Q. Would your valuation be different if there were only five acres, then?

A. It would depend on the condition of the grapes. The vines as they are now on the place are not in very good condition; they haven't been properly pruned in the past and irrigation has been neglected to a certain extent, it looks as though they didn't have sufficient water. [53]

Q. In your opinion then, if the property had been properly maintained during the past three years it would be worth more money?

A. Yes, it would be.

Q. Is it not also a fact that the Moser piece, at least that acreage closer to town, is of considerable value because of the possibility of subdividing it into town lots?

A. I don't think it would be because to the west of it, in towards Delano, Mrs. Thomas attempted to make a subdivision or sell out acreage, and according to the information I gathered, they have been disappointed in the subdivision because of buying water from the city. Now the cost of the water makes it prohibitive to put in any kind of orchard or vines, or do any gardening.

Q. Are there any other sales besides these two you refer to that you base your appraisal on?

(Testimony of Boyce R. Fitzgerald.)

A. The west half of the northwest quarter of 17, 25/26, in the last month or six weeks, has been sold by the California Lands Company for a consideration of \$9000.00.

Q. Where was that with reference to the Moser property?

A. It would probably be two or two and one-half miles southeast of the Moser property.

Q. Is that improved?

A. It is, it has a well and pumping plant on the place and about twenty acres of vines. The balance has been leased or used for growing lettuce and melons. It is in an oil leasing district.

Q. Were there any houses or barns on the property?

A. Just a shack. [54]

Q. That was eighty acres, that \$9000.00?

A. Yes.

Q. And that was two and a half miles from town?

A. Yes.

Q. And are those all the sales?

A. I have a sale here in the east half of the southeast quarter of 13/25/25 for June 17, 1913, to a party by the name of H. B. Scott, at \$75.00 per acre.

By the Commissioner: Did you say 1913?

A. I mean 1937.

Q. Was that improved property?

A. I haven't inspected it. I didn't go on that property because I didn't learn of that particular piece until late yesterday.

Q. In other words, other than this one sale

(Testimony of Boyce R. Fitzgerald.)

which took place about a month ago for \$9000.00 for the property, two and a half miles away from town, you are basing your valuation for the appraisal on sales that took place in 1937, is that right? A. Yes.

Q. Based on that information, would your appraisal of the property in 1937 have been the same? A. Yes.

Q. In other words, in 1937 you would have appraised this property at \$9000.00, too?

A. Eight thousand Dollars—I mean \$9000.00, that is right.

Q. There are no conditions between 1937 and 1939, other than perhaps the upkeep of the property itself, which would have changed your views as to the value?

A. That is right. Now I can give you two other sales if you like, in that vicinity. [55]

Q. I think you might as well.

A. The west half of the southeast quarter of section 7, and the north one-half of the southwest quarter of section 8, 25/26 was sold in the last year or eighteen months at \$125.00 per acre, and that is all in vineyard at the present time, both eighties.

Q. Whereabouts are those located?

A. That would be, one parcel would be, the west half of the southeast quarter of Section 7, would be approximately a half mile east of the Moser, and the parcel in the north half of the southwest quarter of 8 would be probably a mile east of it.

Q. Are those both improved?

(Testimony of Boyce R. Fitzgerald.)

A. They are both in vineyards.

Q. Do they have any houses on them?

A. I don't know about that, they might have a small house. I didn't pay much attention to the houses.

Q. Just vineyards and pumping plants?

A. Yes, I know the wells on both acreages were sufficient to irrigate the eighty acres.

Q. What kind of vines on those properties?

A. I think Muscats and probably Emperors, mixed—I mean Thompsons and Emperors.

Q. What kind of vines are on the Moser place?

A. Thompsons.

Q. What was the age of those vines on the other properties?

A. I judge them to be about the same as the Moser, about fifteen or sixteen years, something like that.

Q. What is your occupation, Mr. Fitzgerald?

A. I am a real estate broker. [56]

Q. Do *you whether* any of those last mentioned sales were sales on foreclosure, or sales by the sheriff?

A. The last two I gave you might be considered a forced sale, by the Growers Security Bank, as they were in liquidation at the time, although I know the bank had held the property for a good many years trying to dispose of the same.

Q. Were they cash deals?

(Testimony of Boyce R. Fitzgerald.)

A. I don't know for sure whether that was a cash sale by the Growers Security Bank, or not, although I know of my own knowledge they would have to be, because they were in liquidation and closing up the affairs of the bank.

Q. Now in making your appraisal of this property, on these sales, did you arrive at the sum of \$9000.00 upon any other basis of appraisal, or is it purely upon the actual sales which have taken place?

A. The actual sales which have taken place, and also I have had some listings there that I have endeavored to make sales on at certain prices, and the sales have failed to materialize for any more than that.

Q. Do you know what Mr. Mosesian is asking for his eighty acres, that is the one I just referred to adjoining the Moser property?

A. No I do not.

Q. Now have you any other basis than you have told me already, for arriving at your appraisal of \$9000.00?

A. No, that is all.

Q. You are in the real estate business?

A. Yes sir.

Q. And when you arrive at that figure, you perhaps base that [57] figure on what it might be possible for you to sell the property for at this time?

A. That would be the market value, what it would bring right now.

Q. That would not necessarily involve the true, intrinsic value of the property, if times were better?

(Testimony of Boyce R. Fitzgerald.)

A. If you were selling it on time and it was possible for times to be better, it would increase the value. I can remember back when the property would sell for as much as seven hundred dollars or eight hundred dollars an acres, but those times are gone forever.

By the Commissioner: Mr. Fitzgerald, did you ascertain anything at all about the Mosesian property adjoining?

A. No, I didn't. I didn't know who owned it, but it lies immediately north and appears to be in very good condition, but I didn't even know the property was for sale.

By the Commissioner: Mr. Tinsman, can you submit some evidence on that?

By Mr. Tinsman: Yes. I was going to. May I examine Mr. Nighbert now?

By the Commissioner: I think so.

F. A. NIGHBERT,

called as a witness, and being first duly sworn, testified as follows:

Direct Examination

By Mr. Tinsman:

Q. What is your name, sir?

A. F. A. Nighbert. [58]

Q. And what is your occupation?

(Testimony of F. A. Nighbert.)

A. I am State Inheritance Tax Appraiser of Kern County.

Q. How many years have you been in that occupation? A. For twenty-five years.

Q. And during that time have you had occasion to appraise real property in this county?

A. I have.

Q. Approximately how many parcels of real property have you appraised?

A. It would be quite difficult to say in number, but many. I appraise twenty to thirty parcels a month.

Q. Are you familiar with the property in the region of Delano? A. Yes sir.

Q. And particularly the north half of southeast quarter of section twelve, township 25 South, Range 25 east? A. Yes.

Q. Which is the Moser property involved in these proceedings? A. Yes.

Q. And have you examined that property, Mr. Nighbert? A. Yes.

Q. And when did you do so?

A. I looked at the property more or less in detail within the last week.

Q. For the purpose of testifying today?

A. Yes sir.

Q. Will you state, Mr. Nighbert, what your conclusions are as to the value of the property, and how you determine that value?

(Testimony of F. A. Nighbert.)

A. I believe that the property today is worth in the vicinity of \$25,000.00, and I get that value by reason of the fact that I have appraised property in other estates [59] in the general area. I am more or less familiar with the location of the Mosesian property.

Q. You are referring to the parcel eighty acres north of the Moser property?

A. Yes, north and a little bit to the west.

Q. Do you know how much Mr. Mosesian is asking for his piece?

A. I don't know, only by hearsay; I have heard \$16,000.00 to \$18,000.00.

Q. Do you know how much Mr. Mosesian paid for his property?

A. Yes, about the same price.

Q. Do you know when he purchased that property?

A. In the last three years.

Q. Do you know how much value you would put on the acreage itself, exclusive of the improvement?

A. I think that land as it lays today is worth \$200.00 an acre.

Q. That is the grapes?

A. I am speaking of the land without the improvements.

Q. Upon what do you base that?

A. On its excellent location and proximity to the city of Delano. The town has practically grown right out to it now, and it is excellent soil. The land lays

(Testimony of F. A. Nighbert.)

well and the water condition there is the same as it everywhere else for miles around there.

Q. Did you appraise the improvements?

A. Yes, the property has a five room house on it, a plastered house about twenty years of age. I appraise that house at this time at about \$1500.00. It has a large barn with a tank on top, a tank house [60] on top, made of redwood siding and a shingle roof. I didn't take the measurements of the barn, but it is a large barn and it has—in addition to that—it has other buildings, the pump shed, three—two good frame drying sheds with corrugated iron roofs in good shape. It has two other sheds of lesser value, and appearance.

Q. What do you value the barn and sheds at?

A. \$1000.00 for the barn and four or five other out buildings, \$1000.00. In addition to that it has the vines which we should take into consideration, which I did not take into consideration in putting the \$200.00 value on the land. Those vines certainly are worth \$100.00 an acre or \$5000.00. They could not be put there for that today, and are not in as bad shape as they look for lack of water, if they are properly trimmed and irrigated and pruned; for their age they are good yet. The reservoir, the appraised value of that, \$250.00, and there is a pumping plant and well; the well is operated by a Packard engine. I didn't get the name of the pump but it appeared to be a Layne & Bowler type. I don't know exactly the true condition of the well

(Testimony of F. A. Nighbert.)

at this time, but I know something about the condition of the water and water level in that general area at this time.

Q. If it was necessary to put down a whole new pump in order to put the water on a hundred per cent pumping basis there, what would the cost be, do you think?

A. Not to exceed [61] \$3000.00.

Q. So even assuming that a new pump was necessary, is it your opinion then that the value of the property, taking off the cost of a new pump, would be in excess of \$20,000.00?

A. It would. In addition to all this there is concrete pipe. I don't know the exact amount in feet, but I do know it must be considerable, because it has to run from a given point at the pump, to the point where the standpipe lies. I would assume that the concrete pipe in connection there and the reservoir, would cost in the neighborhood of \$1500.00 or thereabouts. That totals \$26,750.00. I am depreciating that sum when I give you the figure which I did. It would still be in excess of \$20,000.00 in my judgment.

By Mr. Tinsman: I think that is all. Mr. Moser, would you like to ask Mr. Nighbert any questions?

By the Commissioner: Yes, or Mr. Fitzgerald, either one. You are not represented by counsel. If you would like to ask any questions to enlighten the court, you may do so.

(Testimony of F. A. Nighbert.)

By Mr. Fitzgerald: Mr. Nighbert, do you have any actual knowledge of any actual sales that have taken place in the last two years in that immediate vicinity?

By Mr. Nighbert: Not necessarily in the last two years. Am I being questioned by Mr. Fitzgerald?

By Mr. Fitzgerald: I understood you said I could question him. [62]

By the Commissioner: I meant that Mr. Moser had a right to question him or to question you.

By Mr. Moser: I wonder if you base the valuation on a piece of property, if you start out, is it with the idea of the valuation as to what it should really produce? In the first place we have a twenty year old piece of property; in the second place we have property that couldn't sell——

By the Commissioner: That is testifying; you are testifying now. Why don't you ask Mr. Nighbert pointed questions.

Mr. Moser: Yes.

Cross-Examination
of F. A. Nighbert

By J. Leroy Moser, the Debtor:

Q. How deep is the well on that place?

A. I had no way of measuring, but wells in that general area around there are about 260 feet, and some of them are deeper.

Q. Did you inquire as to how deep the well is on Mr. Mosesian's property? A. No.

(Testimony of F. A. Nighbert.)

Q. Do you know how deep the one is on the other side of it?

A. I asked in a general way some parties supposed to know there, and was told around 250 feet, and some of them are deeper.

By Mr. Moser: I can say this, the well on my place has been there twenty years and is 205 feet, and there isn't another well within a mile and a half or two miles of it that is under 450 feet; not one. [63]

By Mr. Nighbert: I appraised the well and land on the Stradley Estate at \$5500.00 and they paid the inheritance tax on it and didn't object.

By the Commissioner: Mr. Nighbert, you appraised the land at \$16,000.00. That is the naked land—you omit the pipe line, you omit the well, and you omit the buildings? A. Yes.

By the Commissioner: You estimate the value of that eighty acres would be \$200.00 an acre if it was bare land and had no improvements whatsoever, if it were raw land?

A. Yes. I can give you two reasons for that.

By the Commissioner: Yes, give them.

By Mr. Nighbert: I sold land, either five or seven acres, to the Grammar School up here a few years back for \$3500.00. I owned it and I sold it. It is right close, not over half a mile from this land. Now in addition to that, the subdivision possibilities, that the town by its natural growth is forcing out to this land, makes it worth a lot more than the land

(Testimony of F. A. Nighbert.)

adjoining it or close to it, for the reason that subdivisions either do not grow or do grow by reason of their location, and the town is growing northeast, they all know that up there.

Q. How far is this ranch from the city limits?

A. Not far; I believe the city limits are on the east line of eleven and this is on the west line of twelve; it is right up against it. [64]

By Mr. Tinsman: As a matter of fact, to make the record correct, this is within the city limits, it is not, Mr. Moser?

By Mr. Moser: Yes.

By the Commissioner: But the city itself has not grown out to that now?

By Mr. Nighbert: Yes, the houses are right out to the east line, to Mr. Moser's property; there is a group of houses, a row of houses on the west line of his property.

By Mr. Moser: Subdivided into acreage, it is.

By Mr. Nighbert: That is right; if it is subdivided into acreage it is considered as good as lots, and sometimes better.

By the Commissioner: And is there a row of houses?

By Mr. Moser: Four houses within a half mile.

By the Court: Is it at the end of your 80 acres?

By Mr. Moser: The west end, close to Judge Pryor's property.

By the Commissioner: Mr. Moser, has anyone tried to buy this place from you?

(Testimony of F. A. Nighbert.)

By Mr. Moser: I had one man write me a letter.

By the Commissioner: Did Judge Pryor call you?

By Mr. Moser: No.

By the Commissioner: It might as well go in the record—he called me up and asked me if it was for sale.

By Mr. Moser: I have never seen the time when I could [65] sell it for enough to satisfy the mortgage.

By Mr. Tinsman: (Interrogating Mr. Moser) In your original petition filed in this matter, you appraise your property at \$40,000.00, and stated at that time that the property was worth \$40,000.00.

By Mr. Moser: The only thing I can go by is the sale value.

By Mr. Tinsman: What were you basing your value on at that time?

By Mr. Moser: The place south of me sold for about \$20,750, I think it was.

By Mr. Nighbert: Is that the south half of this southeast quarter of 12?

By Mr. Moser: Yes.

By the Commissioner: Do you know what the Mosesian property brought?

By Mr. Moser: \$16,000.00.

By the Commissioner: Is that eighty acres?

By Mr. Moser: Yes, \$3000.00 down.

By the Commissioner: And the balance so much a year?

(Testimony of F. A. Nighbert.)

By Mr. Moser: Yes, and since that time our sales have dropped, the price of our grapes. In 1937 I sold for \$16.00 a tone, in 1938 I sold at \$9.00, and in 1939 I sold at \$8.00 a ton. I only made about \$2400.00 a year difference in income.

By the Court: Another question: That Mosesian property, [66] the eighty acres was all in vines?

A. No, it is now.

By the Commissioner: When it was purchased it wasn't? A. I think about half was.

By the Commissioner: Has it got better buildings?

A. No, the buildings are no better; it has a better well.

By the Commissioner: When did the Mosesian place sell?

A. In the neighborhood of about three years ago.

By Mr. Tinsman: Q. Mr. Moser, the Central Valley Water Project is going to go close to your place, isn't it?

A. Two miles; the paper said last night it would go by, in about ten years.

Q. It is going to come by your way?

A. Yes.

Q. And your property will be considerably enhanced in value?

A. It will help, in my opinion, because the water conditions are very important. The paper said last night it would be ten years before it is completed.

(Testimony of F. A. Nighbert.)

By the Commissioner: Has Mosesian got his property for sale today?

By Mr. Nighbert: It is advertised for sale.

MR. H. L. RICHMOND,

called as a witness, and being first duly sworn, gave the following testimony:

Direct Examination

By Mr. Tinsman:

Q. You are an employee of Mortgage Guarantee Company, in charge of their Fresno office?

A. Yes. [67]

Q. As Manager of that office you have charge of various properties owned by that company, and supervise the property on which these loans are made throughout the San Joaquin Valley?

A. Yes.

Q. And you are familiar with the Moser property, are you?

A. Yes, and also with the property adjoining, known as the Mosesian property.

Q. Was that property sold to Mr. Mosesian by you? A. Yes.

Q. How long ago?

A. In January of 1937.

Q. What was the sale price on that property?

A. \$16,000.00.

(Testimony of Mr. H. L. Richmond.)

Q. Do you know whether or not Mr. Mosesian has that property for sale at present?

A. Yes, he has it for sale at the present time.

Q. What is he asking for the property?

A. He is asking \$18,000.00; I talked to him, day before yesterday on the property, and he has a sign on the property, "For Sale", and he said he would take \$18,000.00 for it.

By the Commissioner: It is all in vines now?

A. There were forty acres of old vines on it when we sold him the property, and he has put in, I would judge, twenty or twenty-five acres of new vines.

By the Commissioner: There is now sixty to sixty-five acres in vines?

A. Forty acres producing.

By the Commissioner: The young ones are not producing?

A. No, he advised me yesterday he was going to take those [68] out because he could do better with vegetables.

By Mr. Richmond: I understand his idea was that on account of the fact he could use his water—the vegetables come in at the time of year when the vineyard is not being produced.

By Mr. Tinsman: Mr. Richmond, how many acres of the Moser property, which we are interested in here, are planted in that wide manner in which Mr. Fitzgerald spoke of?

A. I don't think it is more than five acres.

(Testimony of Mr. H. L. Richmond.)

By Mr. Moser: It is intermittent, about fifteen acres, so it would be about seven and one-half acres.

By the Commissioner: Actually?

By Mr. Moser: Yes.

By Mr. Tinsman: I think that is all.

Cross Examination

By Mr. Moser:

Q. Do you know about the property directly north of me, or the other eighty that Mr. Mosesian bought, do you know what he paid for that?

A. No.

By Mr. Moser: He bought it the year before I brought this proceeding and paid \$10,000.00 for that piece. At that time we were getting \$65.00 a ton for our raisins.

By the Commissioner: There has been no sale as I can ascertain within the last year, or year and six months, a regular sale.

By Mr. Moser: The Guymarri Brothers was the last sale, [69] sold through the Growers Security Bank.

By the Commissioner: That is the Connally place; I am familiar with the Connally place.

By Mr. Tinsman: Here we have the situation, the original loan on this property was \$11,000.00. It is now increased to the point where, by reason of advances for taxes, by the mortgage company, and interest which has not been paid, that the indebtedness amounts to \$24,800.00.

(Testimony of Mr. H. L. Richmond.)

By the Commissioner: That wouldn't increase the value of the land whatsoever. We have only one yardstick to measure by and that is the fair and reasonable market value today of the land. There is a wide divergence between \$9000.00 and \$16,000.00.

By Mr. Tinsman: The Court has got to take this into consideration too, that is the fact that the original appraisers—at the time of the original appraisal, the appraisers appraised this property at \$25,000.00, and this was approved by you, and according to Mr. Fitzgerald there has been no change in the value of the property in the last three years, except by the failure of Mr. Moser to keep it up properly.

By Mr. Moser: At that time I had a gross income from the property of \$4,500. or \$5,000., roughly speaking, and in 1939, or 1938 and 1939 both, we dropped down to somewhere in the neighborhood of \$2400.00 in 1939 or about \$2000.00 in 1938. The income was that much less. That difference in [70] our income, not owing to the fact that it wasn't about the same production, but owing to the price.

Examination of the Debtor

By the Commissioner:

Q. What about your well, what is the shape and condition that your well is in now; how deep is it?

A. 205 feet.

Q. How much water do you produce with that well?

(Testimony of Mr. H. L. Richmond.)

A. Approximately 300 gallons per minute.

Q. How much land do you irrigate?

A. To properly irrigate on that particular soil I should have at least double that amount.

Q. Would it do the same by running it twice as long?

A. Yes, but you can't get the water; the only hope is to cut down the well deeper, or drill a new well, which would cost about the same when you get through with it.

Q. The engine you have, is that adequate?

A. Yes, it could pump about four times that much.

Q. It isn't the pump then, it is the well?

A. We have sucked the well dry many times and have to slow the engine down again.

Q. How many acres have you got in vineyard?

A. Between 45 and 47.

Q. Then with this sparse planting you would have to take off about seven and one-half acres?

A. No, after that is taken off.

Q. You actually have 47 acres?

A. That is right.

Q. What do you do with the other land, is it farmable, tillable, cultivatable?

A. Yes, it is good soil; they won't till it to [71] vegetables because it is too light. I rented it one year to some people and they only planted half of it because it is too light a soil.

(Testimony of Mr. H. L. Richmond.)

Q. Have you soil different from the soil adjoining you?

A. I know it is sandy. If we happen to hit one of those sandy spots we have an awful time getting the water through.

Q. Is that land different from the other lands?

A. Oh, yes.

Q. Is your land better or worse than the other land?

A. It is too light a soil for barley; I have raised barley on that, a few times; it cost me more than I produced out of it.

Q. You don't use that land, then?

A. I had about four acres of it in corn this year.

Q. You had about four acres in corn?

A. Yes, we planted that in February.

Q. You have about 35 acres there of land you could use?

A. No, about 23 or 24 acres. The streets come off of it; but we haven't got water. We never planted it to other things in the spring season because we haven't had sufficient water.

Q. Is that the reason you don't use it, because you don't have water?

A. It takes a lot of water. I put watermelons out one year.

Q. You couldn't grow alfalfa? A. No.

Q. You conserve all the water for your vineyard?

(Testimony of Mr. H. L. Richmond.)

A. It takes all the water that we have got for the 48 acres during the [72] summer to produce a good crop.

By Mr. Tinsman: However, a pump could be put in there for \$3000.00.

By the Commissioner: Then it would have a raw land value, without a well; in other words, a little more than half of his land is in vineyard with a well.

By Mr. Tinsman: The vineyard portion of the property, what portion is that?

A. It is 400 feet south of the north line of the property.

By Mr. Tinsman: Then approximately the north half of the property which faces the street and the city will be available for city subdivision someday?

A Yes, that is right. I kind of had that in mind but the town hasn't got there yet and there is only one-third of the town lots sold now.

By Mr. Nighbert: I have bought and sold a lot of lots in the City of Delano.

By Mr. Moser: What are they worth up around the high school district?

By Mr. Nighbert: It depends on the size and how they are located.

By Mr. Moser: Mr. Nighbert, may I ask why you can determine my place worth \$25,000, and Mr. Mosesian offers his place at \$18,000.00, and he is located better; he is on Cecil Avenue, near the high school, the best district in town. [73]

(Testimony of Mr. H. L. Richmond.)

By Mr. Nighbert: That still doesn't make any difference. I think the location of yours is as good as the location of his.

(At this time a short recess was had.)

The Court reconvened, and the following proceedings were had and testimony given:

By the Commissioner: Mr. Moser, is your land level?

A. It is all level and in shape, I can use it.

By the Commissioner: In reference to that estimate of \$3000.00 for putting down your well, would that cover it?

By Mr. Moser: About that; it would be around that.

By the Commissioner: I would like to think about this and give it my thorough consideration for a few days. Mr. Moser, how much did that pipe line cost you?

By Mr. Moser: I don't know exactly. I know that is properly piped. There is no question about that.

By the Commissioner: Is the Mosesian property pipelined too?

A. Oh yes. But they have a well; my trouble has been for some time the cost of a well and to satisfy the mortgage company.

By the Commissioner: The well has been inadequate for a long time?

A. For six or seven years; in fact it wasn't ever quite large enough. [74]

By the Commissioner: Could you put in a new pumping plant for \$3000.00? A. No.

By Mr. Nighbert: He could take what he has there, and for \$3000.00 put it to work.

By the Commissioner: Is that a conservative estimate, Mr. Moser?

By Mr. Moser: In that neighborhood.

By the Commissioner: What does it cost to put vines on an acre.

By Mr. Moser: You mean put them in to production—it takes three years to bring them to a crop, and the fourth year you could get a pretty good crop. It takes six years to bring them to their peak.

(Certificate of Geraldine Hall, shorthand reporter.)

[Endorsed]: Filed Mar. 10, 1941. R. S. Zimmerman, Clerk. By F. Betz, Deputy Clerk. [75]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, R. S. Zimmerman, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages, numbered 1 to 75, inclusive, contain full, true and correct copies of Report of Appraisers; Order Fixing Rental; Amended Order Fixing Rental; Request

for Re-appraisal; Request for Hearing on Value; Report of Appraiser on Re-appraisal; Orders (three) Extending Time to File Petition for Review; Petition for Review and Exhibit "A" attached thereto; Certificate on Review; Notice of Hearing on Petition for Review; Order on Petition for Review; Notice of Entry of Order; Notice of Appeal; Bond on Appeal; Statement of Points Upon Which Appellants Intend to Rely on Appeal; Appellants' Designation of Contents of Record on Appeal; Appellee's Designation of Contents of Record on Appeal; Stipulation and Order for Inclusion of Additional Documents in Record on Appeal; and Reporter's Transcript of Testimony and Proceedings; which constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I do further certify that the Clerk's fee for comparing, correcting and certifying the foregoing record amounts to \$13.45, which fee has been paid to me by the Appellants.

Witness my hand and the seal of said District Court, this 13th day of May, A. D. 1941.

[Seal] R. S. ZIMMERMAN,
Clerk

By EDMUND L. SMITH,
Deputy Clerk.

[Endorsed]: No. 9822. United States Circuit Court of Appeals for the Ninth Circuit. J. LeRoy Moser and Cecil Carroll Moser, Husband and Wife, Appellants, vs. Mortgage Guarantee Company, a Corporation, Appellee. Transcript of Record Upon Appeal from the District Court of the United States for the Southern District of California, Northern Division.

Filed May 15, 1941.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 9822

J. LeROY MOSER and CECIL CARROLL
MOSER, husband and wife,

Appellants,

MORTGAGE GUARANTEE COMPANY, a cor-
poration,

Appellee.

STATEMENT OF POINTS RELIED UPON ON
APPEAL, DESIGNATION OF RECORD
FOR PRINTING, AND STIPULATION.

On their appeal herein, the appellants state that they intend to rely upon the points mentioned in

the Statement of Points upon which Appellants Intend to Rely on Appeal (Record p. 34), filed in the District Court and set forth in the record herein.

And the appellants designate the following as those parts of the record necessary for the consideration of the points upon which the appellants intend to rely on this appeal and for printing:

All those parts of the transcript and record on appeal provided in the Appellants' Designation of Contents of Record on Appeal (Record p. 40) to be printed, and in the Appellee's Designation of Contents of Record on Appeal (Record p. 42), and in the Stipulated Designation of Additional Record (Record p. 45) and Order for Inclusion of Additional Documents in Record on Appeal (Record p. 46).

It will be found that the said designations, stipulation and order provide for the printing of the entire transcript on appeal.

Dated, this 8th day of May, 1941.

LLOYD S. NIX,

Attorney for Appellants.

It is hereby stipulated that those portions of the record mentioned in the foregoing Designation shall constitute the record on appeal herein.

Dated, this 8th day of May, 1941.

FLEMING & ROBBINS

By C. S. TINSMAN

Attorneys for Appellee.

[Endorsed]: Filed May 15, 1941. Paul P. O'Brien,
Clerk.

